



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

FEB 25 1998

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. James L. Newcomb, Jr., Vice President of  
Newcomb Oil Company  
d/b/a Five Star Food Mart  
1360 E. John Rowan Blvd.  
P.O. Box 390  
Bardstown, Kentucky 40004

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

Re: File No. AED/MSEB -4776

NOTICE OF VIOLATION OF THE CLEAN AIR ACT AND  
REQUEST FOR INFORMATION PURSUANT TO SECTION 114 OF THE  
CLEAN AIR ACT

Dear Mr. Newcomb:

On August 20, 1997, the U.S. Environmental Protection Agency ("EPA") conducted an inspection of your gasoline retail outlet, Five Star Mart # 863, located at 3901 Taylor Blvd., Louisville, Kentucky 40215. The inspection was conducted to determine compliance with section 211(k) of the Clean Air Act ("Act"), 42 U.S.C. § 7545(k), and the regulations issued thereunder (40 C.F.R. Part 80, subpart D). Where inappropriate fuels are used in internal combustion engines, the emissions of harmful gases can increase significantly. Notwithstanding improvements in vehicle emission controls, emissions from motor vehicles continue to make up a very large portion of all air pollution. Congress has established a program of improvement and regulation of fuels to protect our air quality from unnecessary pollution associated with the misfueling of vehicles.

The applicable regulations provide that no person may combine any VOC-controlled reformulated gasoline that is produced using ethanol with any VOC-controlled reformulated gasoline that is produced using any other oxygenate during the period January 1 through September 15. This law also subjects violators to a maximum civil penalty of \$25,000 per day for each violation in addition to recovery of the amount of the economic benefit or savings resulting from the violation.

As a result of the inspection and follow-up investigation, EPA has determined that during August and September 1996 Five Star Mart # 863 was selling VOC-controlled reformulated gasoline that contained ethanol and MTBE. Samples of the regular gasoline

taken from the retail outlet contained 5.25 vol % ethanol and 4.35 vol % MTBE. Where the gasoline contained in any storage tank at any retail outlet is found in violation, 40 C.F.R. 80.79(a)(1) states that the retailer and/or distributor shall be deemed in violation. As a retailer and distributor who combined ethanol VOC-controlled reformulated gasoline with MTBE VOC-controlled reformulated gasoline, you are liable for violation of § 80.78(a)(8).

Sections 211 and 205 of the Act, 42 U.S.C. §§ 7545 and 7524, authorize the Administrator of EPA to assess a civil penalty of up to \$25,000 for every day of each violation and the economic benefit or savings resulting from the violation. In determining the appropriate penalty for the noticed violation, we consider the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of your business, your history of compliance with the Clean Air Act, actions taken by you to remedy the violation and to prevent recurrence of further violations, the effect of the penalty on your ability to continue in business and such other matters as justice may require.

We believe it is in your interest to demonstrate that remission or compromise of the penalty amount is appropriate. However, in order to assist us in developing the appropriate penalty and settlement positions, we have prepared the enclosed Request for Information. Under the law you are required to submit this information or be subject to additional penalties and other sanctions above and beyond those assessed for the fuel violation identified in this Notice. In addition, if you do not submit this information in a timely manner, we will be forced to make assumptions with regard to the factors to consider in determining the appropriate amount of civil penalty which may not be in your interest or whether remission or compromise of the civil penalty amount is appropriate.

We encourage early settlement of such matters. The settlement process provides substantial flexibility for reducing the proposed penalty, particularly if the alleged violation is corrected promptly. If we cannot settle this matter promptly, we reserve the right to file an administrative complaint or refer this matter to the United States Department of Justice with a recommendation to file a civil complaint in federal district court.

The EPA attorney designated below has been assigned to this case. All information should be sent to the case attorney. Please contact this attorney regarding the Notice of Violation and Request for Information.

Jocelyn L. Adair, Attorney  
U.S. Environmental Protection Agency  
Mobile Sources Enforcement Branch (2242-A)  
Air Enforcement Division  
401 M Street, S.W.  
Washington, D.C. 20460  
Phone number: (202) 564-1011

Please let me once again emphasize that while we take our obligation to enforce these requirements seriously, we will make every effort to reach an equitable settlement in this matter.

Sincerely yours,

*Bruce C. Buckheit*

Bruce C. Buckheit, Director  
Air Enforcement Division

Enclosure

Enclosure

REQUEST FOR INFORMATION PURSUANT TO SECTION 114 OF THE  
CLEAN AIR ACT, 42 U.S.C. § 7414

Re: File No. AED/MSEB - 4776

Section 114(a) of the Act, 42 U.S.C. § 7414(a), provides that " the Administrator may require any person.... who is subject to any requirement of this Act ...to make such reports ... and provide such other information, as the Administrator may reasonably require." Respondent is subject to the requirements and prohibitions of the reformulated gasoline ("RFG") and anti-dumping requirements of section 211(k) of the Act, 42 U.S.C. § 7545(k) and thereby is also subject to the informational requirements of section 114(a) of the Act.

Pursuant to the authority contained in section 114 of the Act, 42 U.S.C. § 7414, provide the following information for Newcomb Oil Co. ("Newcomb"), and its affiliates and subsidiaries (hereafter, "Respondent").

1. We are assuming that Respondent and its affiliates and subsidiaries income before expenses or deductions is between \$2 and \$25 Million. If you do not agree, submit your financial statements for the prior three fiscal years and this year current to date including but not limited to balance sheets, profit and loss statements, statements of changes in position, and federal income tax returns.

2. Provide a comprehensive description of Respondent and its affiliates and subsidiaries, including Respondent's business operations, corporate structure, officers, board of directors, and the number of retail outlets and gasoline distribution facilities owned, leased, operated, controlled or supervised by Respondent.

3. For the period, May 1, 1997 through September 15, 1997, provide copies of all Product Transfer Documents that accompanied each load of gasoline delivered to Respondent's retail outlet, Five Star Mart # 863, located at 3901 Taylor Blvd., Louisville, Kentucky 40215. Also provide copies of all invoices showing the actual price paid for each gallon of gasoline, including state and local taxes.

4. Documents demonstrating Respondent's safeguards and management oversight to ensure compliance with the reformulated gasoline regulations.

5. Documents demonstrating what actions were taken to remedy the violation, including the disposition of non-complying gasoline, and to ensure that similar types of violations are less apt to occur in the future. Also, provide documents which show the cost of each corrective action taken.

6. Provide a complete explanation for your basis for alleging on August 21, 1997, that "[t]here was insignificant economic advantage in delivering this product from Louisville (cost savings of only \$81.00)."

7. Any and all other information indicating that remission or compromise of the civil penalty is appropriate. You may elect to provide a statement of the cause of the violation, if known, and any mitigating factors you desire to bring to our attention.

The response to this request shall be full, complete, and to the best of your knowledge. A reply which is false, misleading, or made without regard to its veracity is, in our judgment, equivalent to a refusal to submit information. In order for us to proceed expeditiously with our enforcement docket, your response must be submitted within fifteen days after the date of this letter. If you encounter difficulty in responding to this request within this time frame, please contact the case attorney identified herein. Absent a written extension of the required response date, your failure to respond by the date set forth may lead to immediate enforcement action and a lost opportunity for early settlement of this matter. EPA's enforcement options include the issuance of a compliance order by the Administrator under section 113(a) of the Act, or the filing of a civil action seeking a permanent or temporary injunction, or a civil penalty of not more than \$25,000 per day of violation, or both, under section 113(b) of the Act. Please be aware that a knowing or willful submission of false, fictitious, or fraudulent statements or representations may subject you to possible criminal liability for filing false statements.

Pursuant to EPA regulations appearing at 40 C.F.R. Part 2, you are entitled to assert a confidentiality claim covering any part of the submitted information. If you do not assert such a claim, the submitted information may be available to the public without further notice. Information subject to a business confidentiality claim may be made available to the public only to the extent set forth in the above cited regulations.